

Applying the Prevailing Factor Standard

Causation: Prevailing Factor A Year Later



Glenn M. Amundson, MD
Kansas City Spine and Sports Medicine Center
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Kansas Worker's Compensation Reform Act



- Went into effect May 15th, 2011
- First significant reform since 1993
- To be compensable, work accident must be "Prevailing Factor" (primary factor) in causing the injury, medical condition and impairment

Agenda

- What does Prevailing Factor Mean to the Physician?
- Value of Pre-Placement
- What is an Accident?
- What is Repetitive Trauma?
- What is NOT Compensable?
- Who makes the Final Determination?
- Medical Cases...Kansas
- Discussion

Applying the Prevailing Factor Standard

Prevailing Factor...what does it mean to the physician's medical opinion?



- Primary factor in relation to any other factor
- Consider all plausible causes, and focus on the most probable cause

Prevailing Factor

- Physician's decision making considerations:
 - Reported mechanism of injury/accident (time, place, actions)
 - Objective findings on exam
 - Past medical history or if available functional screening at time of hire
 - Consideration of personal or pre-existing factors
 - Physical demands of the job (PDA)
 - Duration of work activities
 - Frequency of any repetitious work activities
 - Any diagnostic or workplace studies

Physical Demands/Employment Screening; Value in Prevailing Factor

- Establishes real physical demands so you know when you have a work place hazard
 - Fix it when possible
- Establishes baseline capabilities
 - Functional ability to perform the job demands?
 - What limitations might an employee have/accommodations ?



Applying the Prevailing Factor Standard

Physical Demands/Employment Screening; Value in Prevailing Factor (cont'd)

- A health history is documented
 - More likely to identify pre-existing conditions before there is an injury involved, rather than after the injury occurs
- A better job - worker match is possible to prevent future injury

What is an Accident?

(New Definition)

- Sudden, unexpected traumatic event.
- Identifiable by time and place of occurrence.
- Arises out of and in the course of employment.



What is an Accident?



- Occurs in a single work shift.
- Produces symptoms of the injury.
- The accident must be the "Prevailing Factor" in causing the injury

Applying the Prevailing Factor Standard

What determines if an Accident arises out of work?

- **Causal** connection between conditions under which work is required to be performed and the resulting accident.
- The accident or repetitive trauma is the **Prevailing Factor** causing the injury, medical condition, and resulting disability or impairment.

Notice of Accident, Earliest of:



- Thirty (30) days for a repetitive trauma injury
- Twenty (20) days from date employee seeks medical treatment.
- Twenty (20) days from employee's last day worked.

What is Repetitive Trauma?

- Repetitive use, cumulative trauma or micro-trauma.
- Exposure to increased hazard.
- Demonstrated by diagnostic and/or clinical tests.
- Repetitive use must be the "**Prevailing Factor**" in causing the injury.



Applying the Prevailing Factor Standard

How do you determine Repetitive Trauma arises out of work?

- Employment exposed the worker to an increased risk or hazard to which the worker would not otherwise have been exposed in normal non-employment life.
- The increased risk or hazard is the “***Prevailing Factor***” in causing the trauma.
- The repetitive trauma is the “***Prevailing Factor***” in causing the medical condition and resulting disability or impairment.

Time Motion Study



- Measures Variables
 - Intensity, Duration, Frequency per minute, hand/wrist posture, Speed, Frequency of task per day
- Data is compared to Strain Index from Medical College of Wisconsin for scoring

Time Motion Study

- Establishes the degree of hazard in doing the job
 - Not Hazardous
 - Low Risk
 - Moderate Risk
 - Hazardous



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Establishing the Date of Accident for Repetitive Trauma

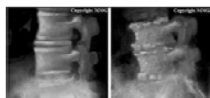
- Date taken off work by Doctor.
- Date placed on modified or restricted duty by Doctor.
- Date employee is advised that condition is work-related by Doctor.
- Last day worked by employee for employer.

What is **Not** Compensable?



- Work as a “triggering” or “precipitating” factor.
- Aggravation, accelerations, or exacerbation of a pre-existing condition.
- Pre-existing condition rendered symptomatic.

What is **Not** Compensable?



- Injury occurring as a result of the natural aging process or normal activities of daily living.
- Injury occurring out of a neutral risk with no particular employment or personal characteristics.
- Injury occurring out of a risk personal to the worker.
- Neutral risks, occurring either directly or indirectly from idiopathic causes.

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What is **Not** Compensable?



- Injuries occurring on the way to and from work
- Voluntary (non- mandatory) recreational or social events
- Injury that results from “reckless” disregard of an employer safety rule or regulation.

What is **Not** Compensable?

- Injured employee
 - Positive drug test (non-prescription drug)
 - Refuses to submit to a chemical test
- Horseplay or fighting no matter the cause



Who Makes Final Determination?

- Physician gives a medical opinion based on presenting evaluation.
 - Not an exact science
 - As the facts evolve so may the opinion
 - Example, initial visit reveals positive findings later determined to be pre-existing
- Payer/Employer determines compensability

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Medical Treatment

- Employer's right to select the treating physician.
- Employee has \$500 unauthorized medical.
- Employer's obligation terminates at MMI.

Future Medical Treatment



- No right to future medical treatment unless it is more probable than not that future medical treatment will be required as a result of the work-related injury.

Terminating Post-Award Medical Benefits

- No treatment received:
 - Within two years from the date of award
 - Two years have elapsed since last medical treatment
- Employer can apply for permanent termination of benefits.

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Background



- Lifetime Rate of developing LBP in the general population is as high as 59-90%.
- Incidence in the general population is as high as 5% at any moment in time.
- Low Back Pain and spine injuries are a major component in Worker's Compensation Claims

Background



- Most cases of LBP and spine injuries can be treated conservatively, but
- The recurrence rate in the work force is 20-44% within one year, and
- The lifetime recurrence rate in the work force is 85%.
- The economic impact has been estimated at \$50-100 billion per year.

Science of Medicine

- Worker's Compensation...
 - If the science was accurate and flawless, there would be no difficulty in taking care of spine injured patient.
 - If the laws were clear and all-encompassing, there would be no difficulty in addressing causation.
 - If anatomy and pain were perfectly understood, outcomes would be better.
 - If physicians were perfect...

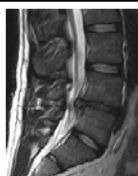
Applying the Prevailing Factor Standard

Our Dream



- No Injuries...or,
 - Injury to worker, observed and documented.
 - Medically and surgically valid mechanism.
 - Motivated worker; works before/during/after.
 - Responds to treatment, medical and/or surgical.
 - Evidence based treatment algorithms.
 - R+R in timely fashion, MMI

Our Dream



- 12 years of employment moving appliances
- Lifting 600lb Fridge; develops L leg pain immediately.
- Lifting performed with his supervisor/observed.
- Conservative management partial relief.
- Surgical management near total relief.
- Works during conservative management.
- 3 days of Narcotics; back to work 3 weeks PO
- MMI/R+R 6 weeks after surgery; full duty.

Our Nightmare

- 32 yo works on assembly line; 4 weeks
- 4 previous WC claims
- Plays rugby recreationally.
- Notes mild back ache, during evening shift, no known specific mechanism.
- Indicates on history back pain worsens next morning, intractable.
- Calls in sick Friday, gives no reason.
- Goes to PCP following week, no report.
- MRI ordered by PCP. Shows HNP.
- Employee reports injury 3 weeks later.
- Leg pain worsening.
- Fails conservative treatment.
- Surgery makes him worse.
- Chronic high dose narcotic.
- Legal involvement; FCE invalid
- Doesn't think he can ever work again...etc.



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Ideal Injured Worker Algorithm

- Injury.
- Documented report.
- Direct care to physicians knowledgeable in Worker's Compensation
- Evaluation.



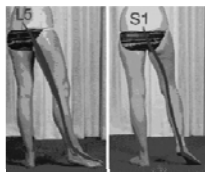
Evaluation

- History
 - When/where/how
 - Timeline since injury.
 - All involved Doctor's reports, since injury, are available.
 - All treatment to date is documented.



Evaluation

- Past History
 - Back pain
 - Leg pain
 - Ever seen a doctor for back problems?
 - Ever had Spine X-Rays or MRI?
 - Ever seen a chiropractor?
 - Injections?
 - Time off work?



Applying the Prevailing Factor Standard

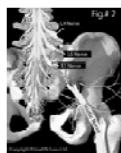
Evaluation



- Physical Exam.
- Review imaging studies, if available.
- Provide diagnosis
- Outline treatment protocols
- Outline scenarios
- Address causation accurately and preferably on initial visit.

Evaluation

- At first intake and each subsequent visit:
 - LBP vs leg symptoms (%)
 - Pain VAS, good to bad (0 – 10)
 - Better, worse, same.
 - Narcotic usage.



- THESE determine treatment protocol.

Treatment

- Order appropriate medical treatment, pending approval from Worker's Compensation insurance or payer.
- It is our job to provide accurate and appropriate medical care, regardless of payer.
- Acceptance or denial, depends on causation and must be accurately identified.

Applying the Prevailing Factor Standard

Causation

- The gateway to entry into the Worker's Compensation system of care.
- It is also one of the most frustrating components of taking care of W/C patients; second only to outcomes.
- Unless truly obvious, NO ONE KNOWS!

Causation

- Pre-existing conditions:
 - Previous back surgery
 - Scoliosis
 - Spondylolisthesis (slip).
 - Stenosis (spinal tightness).
 - Klippel Feil Syndrome and other congenital problems
 - Degenerative disc disease (tears, DSN)
 - Arthritis



Causation

- Pre-existing conditions or pre-disposed to on-the-job injuries?
- Only way to know is to do pre-employment full work-ups and NOT HIRE.
- Cost effective ? Discriminatory?
- Physicians must take the whole package and try to make a decision that is fair to all sides.



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Causation



- Choices:
 - Find physicians that deny everything.
 - Find physicians that approve all injuries.
 - Find physicians that provide well-documented and fair assessments of injuries.
 - Balanced, fair physicians are going to be wrong sometimes, because NO ONE KNOWS!
 - Spine injuries are rarely OBVIOUS.

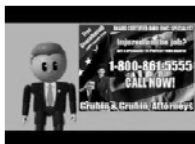
Causation



- On the job work injury?
- On the job worker who has an injury?
- The earlier causation is addressed the more streamlined and efficient care can be.

Causation

- The most difficult and hardest to determine (because legal gets involved)...
 - The worker doing simple activities at work, no different than expected off the job (ADL's)...
 - Opening a file cabinet
 - Picking up a piece of paper
 - Sweeping
 - Turning to answer a phone call



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Causation

- Just because it happened at work does not mean work was responsible...
- Must have physicians that try to balance this part of the equation.
- Unfortunately, it is right, but often these patients end up with legal involvement and care then becomes convoluted, directed to other physicians, complicating outcomes.

Causation

- Without much doubt, large impact:
 - Age
 - Genetics
 - Level of conditioning
 - Smoking
 - Recreational activities
 - Past Injuries / previous surgery
 - MVA's



Causation

- Regardless:
- The workplace can be dangerous
 - Lifting
 - Bending
 - Falls
 - Twisting
 - Altercations
 - Accidents



Applying the Prevailing Factor Standard

Causation Case 1

- 54 y/o male plowing snow for 10 hours on one day and 21 hours on the second day.
- Presents with c/o Right Shoulder soreness.
 - Dx: Right shoulder tendonitis
 - Rx: Ice and Medrol Dose pack
- Returns in 4 days complaints improved but now having tingling to the elbow.
 - Added physical rehab (7 visits)
 - Completed rehab, soreness resolved and case closed

Causation Case 1

- Returns almost 2 months later with c/o continued tingling down the right arm.
- MRI: Extensive DDD, spondylosis, with neuroforaminal stenosis.
 - Rx: Prednisone and HEP
 - Released to regular duty

Causation Case 1

- | | |
|---|---|
| • Under Pre-May 15 Law | • Under New Law |
| • Even with degenerative findings and pre-existing condition if ongoing care would be needed could be required to be covered under past definition of an injury | • Prevailing cause is the multi-level DDD and spondylosis. |
| | • Treated the acute tendonitis of the shoulder but not the cervical complaints. |

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Causation Case 2

- 54 y/o checker on assembly line reports LBP after lifting 115 lb tote moving it from cart to table. History of one year on the job. No reported pre-existing conditions.
- On exam he has tenderness and tightness in the low back but *no radicular symptoms*.
 - Dx: Lumbar Strain
 - Rx: Ice, lifting restrictions and bedtime meds

Causation Case 2

- Returns 4 days later with some improvement and sent for physical rehab evaluation.
 - Indication of self limiting behaviors
 - ROM and Strength Deficits
 - RTW with increased lifting capabilities and 6 PT sessions

Causation Case 2

- Patient “no show’s” for PT but returns 6 days later for physician visit
 - Reports seeing his own Orthopedic Surgeon (unauthorized)
 - MRI
 - Meds (Medrol, Baclofen, and Hydrocodone)
 - Restrictions and no PT
 - Soft Lumbar Support

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Causation Case 2

- Now, Patient reports new complaints not anatomically related to the initial mechanism of injury, subjective pain and **radicular symptoms**.
- He is positive for Waddell's and demonstrates inconsistencies with subjective complaints when distracted.
- MRI reveals pre-existing conditions.

Causation Case 2

- Under Pre-May 15 Law
- Case continues with PMR doctor, epidural injections and an attorney.
- Under New Law
- Work is not the prevailing cause of the new symptoms.
- MRI: Multi-level spondylosis, moderate to severe spinal stenosis at L4,5; Facet disease at L4,5 and L5,S1.
- Case closed with referral to seek ongoing care from orthopedist under group health



Causation Case 3

- 43yo Warranty administrator reports that after moving file cabinets on rollers that she developed pain in the right side of her neck.
- Only MOI is pushing a file cabinet and denies falling, any impact, or any jerking.
- Presents with neck soreness and spasms in the right trapezius. History reveals she had been taking gabapentin, and has a history of disk pathology since March 2007.

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Causation Case 3

- Physician reviews past MRI and talks with the adjuster.
 - Immediate Dx: Cervical/Trapezius Strain
 - Rx: Conservative, duty status restrictions and meds for strain.
 - Further review of history reveals personal neurosurgeon recommended surgery for herniated cervical disc which she declined.

Causation Case 3

- | | |
|---|--|
| <ul style="list-style-type: none"> • Under Pre-May 15 Law • Physician can provide the history for the adjuster to investigate. • Conservative Rx of the symptoms until decision is made since the strain is arising out of moving files for work. • Further care was ultimately denied, surgery performed under group health. | <ul style="list-style-type: none"> • Under New Law • Immediate recommendation from physician would be that work is not the prevailing cause. • Pre-existing and well documented cervical pathology. |
|---|--|

Summary: Final Determination

- The physician must give a medical opinion based on the injured employee's presenting evaluation and available medical records.
- The more accurate and comprehensive the patient information provided, the more accurate the disposition.

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Discussion



Glenn M. Amundson, MD
Kansas City Spine and Sports Medicine Center
Overland Park , Kansas
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